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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 TIMOTHY WHITE and GINA WHITE, a
12 marital couple,

13 Plaintiffs,

14 v.

15 NORTHWEST METAL FAB & PIPE and
16 ANTHONY L. ST. JULIEN,

17 Defendants,

18 v.

19 EVANSTON INSURANCE COMPANY,

20 Intervenor.

CASE NO. C07-5591BHS

ORDER DENYING
PLAINTIFFS' MOTION TO
AMEND COMPLAINT AND
GRANTING DEFENDANT
ANTHONY L. ST. JULIEN'S
MOTION TO CONTINUE
TRIAL DATE AND PRETRIAL
DEADLINES

21 This matter comes before the Court on Plaintiffs' Motion to Amend Complaint
22 (Dkt. 56) and Defendant Anthony L. St. Julien's Motion to Continue Trial Date and Pre-
23 Trial Deadlines (Dkt. 64). The Court has considered the pleadings filed in support of and
24 in opposition to the motions and the remainder of the file and hereby denies Plaintiffs'
25 motion and grants Defendant's motion for the reasons stated herein.

26 **I. FACTUAL AND PROCEDURAL BACKGROUND**

27 On April 28, 2008, Plaintiffs Timothy and Gina White filed a Second Amended
28 Complaint for Damages against Defendants Northwest Metal Pipe & Fab Company and

1 Anthony L. St. Julien. Dkt. 44 (“Complaint”). Evanston Insurance Company has
2 intervened on behalf of Defendants. *See* Dkts. 8 and 22.

3 Plaintiffs’ causes of action stem from an alleged company party that was intended
4 to build and encourage “employee morale and cohesion.” Complaint, ¶ 2.1. Plaintiffs
5 allege that, sometime before the party, Defendant Northwest’s employee Andrew Hoover
6 brought an explosive device to the workplace. *Id.* at 2.8. Plaintiffs also allege that Mr.
7 Hoover and James Harrison attended the party which started sometime in the evening. *Id.*
8 ¶¶ 2.12, 2.21. Mr. Hoover and Mr. Harrison allegedly detonated the explosive device
9 severely injuring Plaintiff Timothy White. *Id.* ¶¶ 2.21-2.25. Plaintiffs allege that
10 Defendant St. Julien instructed Mr. Hoover to retrieve the explosive device from Mr.
11 Hoover’s vehicle and that Defendant St. Julien was, at all relevant times, acting as
12 “Superintendent within the scope of employment for [Defendant] Northwest.” *Id.* ¶¶ 1.3,
13 2.17.

14 On May 13, 2008, the Court issued a scheduling order setting pretrial and trial
15 dates. Dkt. 48. Trial is currently set to commence on the Court’s April 7, 2009 calendar.
16 *Id.*

17 On June 3, 2008, the parties stipulated to continue the deadline for adding third
18 parties to this action. Dkt. 53. In the stipulation, the parties agreed that “[t]he reason for
19 this extension is that the parties need to take the depositions of two persons who are
20 named in plaintiffs’ complaint . . . Andrew Hoover and James Harrison.” *Id.* at 1-2. The
21 parties represented to the Court that Mr. Hoover’s deposition could not be taken because
22 of a pending criminal trial against him based on the events at the party. *Id.* at 2. Mr.
23 Hoover would supposedly plead the Fifth Amendment until the trial was completed. *Id.*
24 That trial was scheduled to commence on July 28, 2008. *Id.* On June 5, 2008, the Court
25 granted the stipulation because the parties had shown “good cause” to alter the pretrial
26 deadline. Dkt. 54.

1 On June 27, 2008, Mr. Harrison filed a complaint claiming damages for injuries
2 sustained at the company party. *See Harrison v. Northwest Metal Fab & Pipe*, Case No.
3 C08-5409RBL (W.D. Wash. 2008). Plaintiff Harrison has moved to consolidate his case
4 with this case. *See id.*, Dkt. 7.

5 On July 11, 2008, Plaintiffs filed a Motion to Amend. Dkt. 56. On July 28, 2008,
6 Defendants responded. Dkts. 59 and 60. On July 31, 2008, Plaintiffs replied. Dkt. 63.

7 On August 8, 2008, Defendant St. Julien filed a Motion to Continue Trial Date and
8 Pre-Trial Deadlines. Dkt. 64. Defendant claims that Mr. Hoover's criminal trial has been
9 continued and is currently scheduled to commence on the state court's October 16, 2008
10 calendar. *Id.* at 3. On August 14, 2008, Plaintiffs and Defendant Northwest responded.
11 Dkts. 67 and 68. On August 19, 2008, Defendant St. Julien replied. Dkt. 71.

12 II. DISCUSSION

13 A. Plaintiffs' Motion to Amend

14 In their reply, Plaintiffs request that the Court strike their motion. Dkt. 63.
15 Defendants argued that Plaintiffs' amendment would have been futile. *See* Dkts. 59 and
16 60. Therefore, the Court denies Plaintiffs' motion as moot.

17 B. Defendant St. Julien's Motion to Continue

18 A court may modify a schedule for good cause. Fed. R. Civ. P. 16(b)(4).
19 Continuing pretrial and trial dates is within the discretion of the trial judge. *See King v.*
20 *State of California*, 784 F.2d 910, 912 (9th Cir. 1986).

21 Defendant St. Julien moves for a continuance based on (1) his inability to
22 adequately depose Mr. Hoover because of the continued state court criminal trial and (2)
23 the potential consolidation of Mr. Harrison's federal court action. Dkt. 64 at 2-5.
24 Although Plaintiffs have already conceded that the pending criminal trial was good cause
25 to extend the deadline to add additional parties (Dkt. 53), Plaintiffs oppose this motion to
26 continue because Defendant "has failed to show that good cause exists to modify the case
27 schedule." Dkt. 68 at 3. Plaintiffs claim that Defendant has "abundant evidence from
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1 which to evaluate and prove the fault on the part of [Mr.] Hoover.” *Id.* at 4. Plaintiffs
2 also claim that if Mr. Hoover pleads the Fifth at his deposition, then the jury can draw an
3 adverse inference against him and that would “actually help[] Defendant St. Julien prove
4 fault against Mr. Hoover.” *Id.* at 5-6. Plaintiffs apparently would like to litigate both
5 sides of this dispute.


6 Defendant St. Julien argues that “he is entitled to determine what type of case he
7 wishes to present in his defense, and is not bound by suggestions.” Dkt. 71 at 2. The
8 Court agrees. While it is unfortunate that the state court proceeding has been delayed, the
9 scheduling of that trial is beyond the Defendant’s control. Defendant shall be allowed an
10 equal opportunity to prepare and present an adequate defense. Defendant has shown good
11 cause exists to continue the pretrial and trial dates in this matter. Therefore, Defendant’s
12 motion for a continuance is granted.

13 **III. ORDER**

14 Therefore, it is hereby

15 **ORDERED** that Plaintiffs’ Motion to Amend Complaint (Dkt. 56) is **DENIED**
16 and Defendant Anthony L. St. Julien’s Motion to Continue Trial Date and Pre-Trial
17 Deadlines (Dkt. 64) is **GRANTED**. The Court’s scheduling order (Dkt. 48) is
18 **VACATED** and the clerk is directed to issue a new scheduling order.

19 DATED this 22nd day of August, 2008.

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22 BENJAMIN H. SETTLE
23 United States District Judge
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